

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
. .
W.R. GRACE & CO., .
et al., . USX Tower - 54th Floor
. 600 Grant Street
. Pittsburgh, PA 15219
Debtors. .
. October 14, 2009
. 9:08 a.m.
.

TRANSCRIPT OF PLAN CONFIRMATION HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Kirkland & Ellis, LLP
By: DAVID BERNICK, ESQ.
JANET BAER, ESQ.
LISA G. ESAYIAN, ESQ.
ELLI LEIBENSTEIN, ESQ.
200 East Randolph Drive
Chicago, IL 60601

For the Asbestos Caplin & Drysdale, Chartered
Creditors Committee: By: NATHAN FINCH, ESQ.
PETER LOCKWOOD, ESQ.
One Thomas Circle, NW
Washington, D.C. 20005

For the Future Orrick, Herrington & Sutcliffe, LLP
Claimants By: JONATHAN GUY, ESQ.
Representatives: Washington Harbour
3050 K Street, N.W.
Washington, D.C. 20007

Audio Operator: Cathy Younker

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609)586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd.):

For W.R. Grace:

W.R. Grace
By: MARK SHELNITZ, ESQ.
7500 Grace Drive
Columbia, MD 21044

For Allstate Insurance:

Cuyler Burk, LLP
By: ANDREW K. CRAIG, ESQ.
Parsippany Corporate Center
Four Century Drive
Parsippany, NJ 07054

For the Property
Damage Committee:

Bilzin Sumberg Baena Price &
Axelrod LLP
By: MATTHEW KRAMER, ESQ.
200 South Biscayne Boulevard
Suite 2500
Miami, FL 33131

For OneBeacon Ins. Co.,
Geico, Seaton Ins. Co.,
& Republic Ins. Co.:

Drinker Biddle & Reath LLP
By: MICHAEL F. BROWN, ESQ.
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103

For State of Montana
Dept. of Environmental
Quality:

Womble Carlyle Sandridge & Rice
By: KEVIN MANGAN, ESQ.
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801

For the Libby Claimants:

Lewis, Slovak & Kovacich, P.C.
By: MARK KOVACICH, ESQ.
725 Third Avenue North
Great Falls, MT 59401

McGarvey, Heberling, Sullivan and
McGarvey, P.C.

By: JON HEBERLING, ESQ.
725 Third Avenue North
Great Falls, MT 59401

Cohn Whitesell & Goldberg, LLP

By: DANIEL C. COHN, ESQ.
101 Arch Street
Boston, MA 02110

APPEARANCES (Cont'd.):

For Arrowood: Wilson, Elser, Moskowitz, Edelman,
& Dicker, LLP
By: CARL J. PERNICONE, ESQ.
150 East 42nd Street
New York, NY 10017

For BNSF Railway: Pepper Hamilton, LLP
By: LINDA CASEY, ESQ.
3000 Two Logan Square
Philadelphia, PA 19103

For CNA: Goodwin Procter, LLP
By: MICHAEL GIANNOTTO, ESQ.
Exchange Place
Boston, MA 02109-2881

For Maryland Casualty: Connelly Bove Lodge & Hutz, LLP
By: JEFFREY WISLER, ESQ.
The Nemours Building
1007 North Orange Street
Wilmington, DE 19899

For MCC & Zurich: Eckert Seamans
By: EDWARD D. LONGOSZ, ESQ.
1747 Pennsylvania Avenue, NW
Suite 1200
Washington, DC 20006

Wiley Rein, LLP
By: RICHARD A. IFFT, ESQ.
1776 K Street NW
Washington, DC 20006

For Ford, Marrin, Esposito, Witmeyer & Gleser: Ford, Marrin, Esposito, Witmeyer &
Gleser
By: ELIZABETH DeCRISTOFARO, ESQ.
Wall Street Plaza
New York, NY 10005

For Kaneb Pipe Line Operating Partnership, LP: Fulbright & Jaworski
By: STEVE PEIRCE, ESQ.
300 Convent Street, Suite 2200
San Antonio, TX 78205-3792

APPEARANCES (Cont'd.):

For Kaneb Pipe Line
Operating Partnership,
LP:

Gilbert & Renton, LLC
By: ROBERT GILBERT, ESQ.
344 North Main Street
Andover, MA 01810

For AXA Belgium:

Tucker Arensberg, P.C.
By: MICHAEL A. SHINER, ESQ.
1500 One PPG Place
Pittsburgh, PA 15222

For Committee of
Asbestos Personal
Injury Claimants:

Campbell & Levine
By: MARK T. HURFORD, ESQ.
800 North King Street
Suite 300
Wilmington, DE 19701

For Garlock Sealing
Technologies:

Robinson, Bradshaw & Hinson, P.A.
By: RICHARD WOLF, ESQ.
101 North Tryon Street
Suite 1900
Charlotte, NC 28246

For Sealed Air:

Skadden, Arps, Slate, Meagher & Flom,
LLP
By: DAVID TURETSKY, ESQ.
One Rodney Square
Wilmington, DE 19801

Skadden, Arps, Slate, Meagher & Flom,
LLP
By: J. GREGORY St. CLAIR, ESQ.
Four Times Square
New York, NY 10036

For the Unsecured
Creditors' Committee:

Strook & Strook & Lavan
By: ARLENE KRIEGER, ESQ.
KENNETH PASQUALE, ESQ.
180 Maiden Lane
New York, NY 10038

For Continental
Casualty Co.:

Goodwin Procter, LLP
By: DANIEL GLOSBAND, ESQ.
Exchange Place
Boston, MA 02109-2881

APPEARANCES (Cont'd.):

For the Debtors: Kirkland & Ellis, LLP
By: THEODORE FREEDMAN, ESQ.
Citigroup Center, 153 East 53rd St.
New York, NY 10022

For the PD Committee: Speights & Runyan
By: DANIEL SPEIGHTS, ESQ.
ALAN RUNYAN, ESQ.
200 Jackson Avenue, East
Hampton, SC 29924

For Anderson Memorial Hospital: Kozyak, Tropin & Throckmorton, PA
By: JOHN W. KOZYAK, ESQ.
DAVID ROSENDORF, ESQ.
2525 Ponce de Leon, 9th Floor
Miami, Florida 33134

For the Equity Committee: Kramer Levin Naftalis & Frankel
By: DAVID E. BLABEY, JR., ESQ.
919 Third Avenue
New York, NY 10022

For the Bank Lenders: Landis, Rath & Cobb, LLP
By: RICHARD COBB, ESQ.
919 Market Street, Suite 1800
Wilmington, DE 19899

For PD/FCR: Law Office of Alan B. Rich
By: ALAN B. RICH, ESQ.
1201 Main Street
Suite 1910, LB 201
Dallas, TX

ALEX SANDERS, ESQ.

TELEPHONIC APPEARANCES:

For the Debtors: Kirkland & Ellis, LLP
By: SAM BLATNICK, ESQ.
BARBARA HARDING, ESQ.
200 East Randolph Drive
Chicago, IL 60601

TELEPHONIC APPEARANCES (Cont'd.):

For the Debtors:	Kirkland & Ellis, LLP By: KRISTINA ALEXANDER, ESQ. DEANNA BOLL, ESQ. CHRISTOPHER GRECO, ESQ. CLEMENT YEE, ESQ. Citigroup Center, 153 East 53rd St. New York, NY 10022
For the Debtors:	Pachulski, Stang, Ziehl & Jones By: KATHLEEN P. MAKOWSKI, ESQ. 919 North Market Street, 17th Floor Wilmington, DE 19899-8705
For the Debtors:	Onex Credit Partners By: LEWIS KRUGER, ESQ.
For the Equity Committee:	Kramer Levin Naftalis & Frankel By: PHILIP BENTLEY, ESQ. 919 Third Avenue New York, NY 10022
For National Casualty Co.:	Dorsey & Whitney, LLP By: JOSE L. HERNANDEZ, ESQ. 250 Park Avenue New York, NY 10177-1500
For Various Claimant Firms:	Stutzman, Bromberg, Esserman & Plifka By: DAVID J. PARSONS, ESQ. 2323 Bryan Street, Suite 2200 Dallas, TX 75201
For Morgan Stanley Senior Funding, Inc.:	Katten Muchin Roseenman, LLP By: JEFF FRIEDMAN, ESQ. MERRITT PARDINI, ESQ. 575 Madison Avenue New York, NY 10022-2585
For Fireman's Fund Insurance Co.:	Crowell & Moring LLP By: LESLIE A. DAVIS, ESQ. MARK PLEVIN, ESQ. 1001 Pennsylvania Avenue, N.W. Washington, DC 20004 Stevens & Lee By: JOHN D. DEMMY, ESQ. 1105 North Market Street, 7th Floor Wilmington, DE 19801

TELEPHONIC APPEARANCES (Cont'd.):

For Serengeti:

Vinson & Elkins, LLP
By: ARI BERMAN, ESQ.
Trammell Crow Center
2001 Ross Avenue, Suite 3700
Dallas, TX 75201

For Scott Company:

Vorys, Sater, Seymour & Pease, LLP
By: TIFFANY COBB, ESQ.
52 East Gay Street
Columbus, OH 43216

For Official Committee
of Asbestos Property
Damage Claimants:

Dies & Hile, LLP
By: MARTIN DIES, ESQ.
1601 Rio Grande, Suite 330
Austin, TX 78701

LECG

By: ELIZABETH DEVINE, ESQ.
1725 Eye Street NW, Ste 800
Washington, DC, 20006

Riker Danzig Scherer Hyland & Perretti
By: CURTIS PLAZA, ESQ.
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981

For the Property
Damage Committee:

Bilzin Sumberg Baena Price &
Axelrod LLP
By: SCOTT BAENA, ESQ.
JAY SAKALO, ESQ.
200 South Biscayne Boulevard
Suite 2500
Miami, FL 33131

For the Bank Lenders:

Paul Weiss Rifkind Wharton &
Garrison, LLP
By: MARGARET PHILLIPS, ESQ.
REBECCA ZUBATY, ESQ.
ANDREW N. ROSENBERG, ESQ.
1285 Avenue of the Americas
New York, NY 10019

For Asbestos Property
Damage Claimants:

Scott Law Group
By: DARRELL SCOTT, ESQ.
1001 East Main Street, Suite 500
Sevierville, TN 37864

TELEPHONIC APPEARANCES (Cont'd.):

For National Union Fire Insurance Co.: Zeichner Ellman & Krause, LLP
By: ROBERT GUTTMANN, ESQ.
575 Lexington Avenue
New York, NY 10022

For the Future Claimants Representatives: Orrick, Herrington & Sutcliffe, LLP
By: DEBRA FELDER, ESQ.
KATE ORR, ESQ.
Washington Harbour
3050 K Street, N.W.
Washington, D.C. 20007

For Federal Insurance Company: Cozen O'Connor
By: ILAN ROSENBERG, ESQ.
1900 Market Street
Philadelphia, PA 19103

For Official Committee of Asbestos Personal Injury Claimants: Anderson Kill & Olick
By: ROBERT M. HORKOVICH, ESQ.
1251 Avenue of the Americas
New York, NY 10020-1186

For David T. Austern, the Future Claimants' Representative: Phillips, Goldman & Spence, P.A.
By: JOHN C. PHILLIPS, ESQ.
1200 North Broom Street
Wilmington, DE 19806

For the Asbestos Creditors Committee: Ferry Joseph & Pearce, P.A.
By: THEODORE TACCONELLI, ESQ.
824 Market Street, Suite 19899
Wilmington, DE 19899

For Ford, Marrin, Esposito, Witmeyer & Gleser: Ford, Marrin, Esposito, Witmeyer & Gleser
By: SHAYNE SPENCER, ESQ.
Wall Street Plaza
New York, NY 10005

For Official Committee of Unsecured Creditors: Duane Morris, LLP
By: MICHAEL LASTOWSKI, ESQ.
1100 North Market Street, Suite 1200
Wilmington, DE 19801-1246

TELEPHONIC APPEARANCES (Cont'd.):

For Official Committee
of Asbestos Property
Damage Claimants:

Brandi Law Firm
By: THOMAS J. BRANDI, ESQ.
TERENCE D. EDWARDS, ESQ.
44 Montgomery St., Suite 1050
San Francisco, CA 94104

Lieff, Cabraser, Heimann & Bernstein
By: ELIZABETH J. CABRASER, ESQ.
Embarcadero Center West
275 Battery Street, Suite 3000
San Francisco, CA 94111

For the Libby Claimants:

Cohn, Whitesell & Goldberg, LLP
By: CHRISTOPHER M. CANDON, ESQ.
101 Arch Street
Boston, MA 02110

For the Libby Claimants:

Landis, Rath & Cobb, LLP
By: KERRI K. MUMFORD, ESQ.
JAMES S. GREEN, JR., ESQ.
919 Market Street, Suite 1800
Wilmington, DE 19899

For the PD Committee:

Speights & Runyan
By: MARION FAIREY, ESQ.
200 Jackson Avenue, East
Hampton, SC 29924

For Everest Reinsurance
Company, et al.:

Marks, O'Neill, O'Brien & Courtney LLP
By: BRIAN L. KASPRZAK, ESQ.
JOHN D. MATTEY, ESQ.
913 North Market Street
Suite 800
Wilmington, DE 19801

For Arrowwood
Indemnity Co.:

Bifferato Gentilotti LLC
By: GARVAN McDANIEL, ESQ.
800 North King Street
Wilmington, DE 19801

For Official Committee
of Asbestos Property
Claimants:

Richardson Patrick Westbrook &
Brickman, P.C.
By: EDWARD J. WESTBROOK, ESQ.
174 East Bay Street
Charleston, SC 29401

TELEPHONIC APPEARANCES (Cont'd.):

For Hartford Financial Service Group: Wilmer Wilmer Cutler Pickering Hale & Dorr, LLP
By: MELANIE R. DRITZ, ESQ.
399 Park Avenue
New York, NY 10022

For Asbestos Property Damage Claimants: Pryor Cashman, LLP
By: RICHARD LEVY, ESQ.
410 Park Avenue
New York, NY 10022

For David T. Austern, Future Claimants' Representative: Lincoln International, LLC
By: JOSEPH RADECKI

For Travelers: Simpson Thacher
By: ELISA ALCABES, ESQ.
MARY BETH FORSHAW, ESQ.
425 Lexington Avenue
New York, NY 10017

Morris Nichols Arsht & Tunnell, LLP
By: ANN C. CORDO, ESQ.
ERIN FAY, ESQ.
1201 N. Market Street
PO Box 1347
Wilmington, DE 19899-1347

For State of Montana Dept. of Environmental Quality: Womble Carlyle Sandridge & Rice
By: FRANCIS MONACO, ESQ.
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801

For Garlock Sealing Technologies: Robinson, Bradshaw & Hinson, P.A.
By: GARLAND CASSADA, ESQ.
101 North Tryon Street
Suite 1900
Charlotte, NC 28246

Morris, James, Hitchens & Williams, LLP
By: BRETT D. FALLON, ESQ.
PNC Bank Center
222 Delaware Avenue
10th Floor
P.O. Box 2306
Wilmington, DE 19899

TELEPHONIC APPEARANCES (Cont'd.):

For Federal Insurance
Company:

Cozen O'Connor
By: JACOB C. COHN, ESQ.
1900 Market Street
Philadelphia, PA 19103

For National Union Fire
Insurance Co.:

Zeichner Ellman & Krause, LLP
By: MICHAEL DAVIS, ESQ.
575 Lexington Avenue
New York, NY 10022

For Deborah Pace:

DebtWire
By: DEBORAH PACE

For the State of
California:

Hahn & Hessen
By: ALISON SCHRAG, ESQ.
488 Madison Avenue
New York, NY 10022

For Party Siegel:

Traub, Lieberman, Straus & Shrewsberry
By: ROBERT SIEGEL, ESQ.
Seven Skyline Drive
Hawthorne, NY 10532

I N D E X

<u>EXHIBITS</u>		<u>I.D.</u>	<u>EVD.</u>
AMH-63	Letter from Dr. Rourke	239	--
PP-361	Marked copy of LC-10	--	188
Prouty Deposition	Designation 118	--	188
Prouty 1006	Summary slide	--	188

1 settle. There's no way to know that any particular jury would
2 award, to pick a number, 1.1 million as opposed to 1.0 million
3 as opposed to \$60,000. There's just no way to know that.

4 MR. KOVACICH: I agree there's no way to know what a
5 jury would award, but there are many factors that parties on
6 both sides of the settlement take into account --

7 THE COURT: Sure.

8 MR. KOVACICH: -- in deciding how to value the
9 claims, and those factors go far beyond what is the disease
10 that the claimant has. I think Mr. Finch circulated a 1006
11 summary for Mr. Prouty. I'll be corrected if I'm wrong, but I
12 believe it indicated he settled for something like \$3.7
13 million.

14 THE COURT: Sure. I mean, there can be -- I agree.
15 There can be all kinds of factors that can be your age, your
16 other medical condition, how many children you have, how long
17 an employee you've been, whether you've had other exposure.
18 The list goes on and on.

19 MR. KOVACICH: And the TDP does not adequately
20 account for those factors, and it does not account for those
21 factors with respect to the situation in Libby because the
22 strength of the exposure evidence, the lack of a causation
23 defense, and the aggravated liability do not allow these
24 claimants to get anywhere near the values that similar claims
25 were getting prior to the bankruptcy.

1 THE COURT: If the debtor tried to classify Libby
2 claimants in a different class simply to pay them more through
3 this plan than they paid other claimants with the same disease
4 the plan would not be confirmable. The debtor could not do
5 that. It would be gerrymandering. That plan simply wouldn't
6 work.

7 MR. KOVACICH: Well, Your Honor, I respectfully
8 disagree that the only factor that should be used to classify
9 and determine the value that these claims receive under the
10 bankruptcy is the medical condition. I think that --

11 THE COURT: I don't think that's what's --

12 MR. KOVACICH: -- other factors do need to be taken
13 into account.

14 THE COURT: Yes.

15 MR. KOVACICH: And the plan does not adequately
16 account for those factors in order to pay these claims
17 according to the value that they --

18 THE COURT: I think that's --

19 MR. KOVACICH: -- that similar claims received prior
20 to the bankruptcy.

21 THE COURT: I think that's a misapprehension of the
22 plan. The plan has based what it can pay through the TDP on
23 preexisting settlement criteria -- settlement numbers and
24 criteria which took into account all of those factors. If the
25 TDP attempted to do it again it would be duplicating the

1 settlement factors that were already considered before the TDP
2 was written. That's the purpose --

3 MR. KOVACICH: But, the --

4 THE COURT: -- for which you categorize particular
5 claims at payment levels in the TDP because all of those
6 factors have been considered, and this is what the debtor and
7 the parties who negotiate feel they can pay to particular
8 claimants with particular diseases in those categories. Those
9 factors had to have been considered beforehand because they
10 were considered in the settlements, and that's the basis for
11 the TDP values.

12 MR. KOVACICH: There is some discretion in the
13 individual review process --

14 THE COURT: Sure.

15 MR. KOVACICH: -- for other factors to be taken into
16 account, but there is a cap for every disease level --

17 THE COURT: Absolutely.

18 MR. KOVACICH: -- that prevents a claimant with a
19 certain disease level from having a claim valued in excess of
20 that cap. And the problem with respect to --

21 THE COURT: Absolutely, because if there were no cap
22 we'd back in the non-bankruptcy world where the debtor could
23 never propose a feasible plan. There has to be a cap.
24 Otherwise, the debtor may as well go litigate and the first
25 people who get their verdicts will bankrupt the company and